was or was not inflicted first. It was essential to clear up these points in view of the doctor's specific opinion that the cause of death was multiple fracture of the skull. The only question which was put to the doctor on the fall theory resulted in the answer :—

"If the lacerated wounds were caused first — and then the body was thrown from a height and the head struck some hard surface, the fracture might be caused in that way."

The summing up by the learned trial judge was, in our view, unsatisfactory in four respects. First, his summing up on the medical evidence, where he says :—

"And the most likely way was the throat wound followed by a fall from a height on to something hard which brought about the actual instant death owing to the fracture of the skull."

Here there is a clear misdirection as the doctor requires a "throwing" not a "falling" to cause the head injuries. Further, there is no statement by the doctor that the head injuries would cause instant death.

Secondly, on the question of the finding of the body, the learned trial judge said :—

"So you must take it that the assailant, whoever he was, did not directly cause the fracture of the skull. He could not have done it with that knife. Supposing that is how it really happened, the body would be sprawled over, or close to, the log on which the man fell. But the body was found straightened out, more or less tucked under the side of the fallen trees, with the feet together, on its back and the hands by the sides. So if it happened as I suggested (my suggestion really being the doctor's suggestion, applying what we know about the site) it necessarily follows that somebody re-arranged the body afterwards. Also the man's bicycle was found a considerable distance away in the lallang. Somebody other than Mingan shifted his bicycle. That, gentleman, is consistent with the thing being a murder, an intentional murder hiding the body. But supposing you had a quarrel with a man, got into a fight with him, intended to hurt him but did not really intend to kill and then you found you had killed him, you might still want to hide the body to conceal the crime. The concealment of the body is entirely consistent with the death having been due to a definite crime. But the concealment of the body does not necessarily point to murder as distinct from the smaller offence."

The learned trial judge in this passage invites the assessors to draw sinister conclusions from the position in which the body was found and indicates that the body was deliberately concealed. But under cross-examination Inspector Periera said :—

"There was lallang round the body — growing — body not artificially concealed but in an obscured position — it was dusk when I arrived."

This, in our opinion, was a misdirection on the facts.

Thirdly, the learned trial judge's direction on the bloodstained shirt was not satisfactory. The assessors may well have understood from the summing up that though no traces of blood were found by the Government Analyst, this failure to find blood did not detract from the credibility to be attached to evidence of witnesses who said there was blood in the shirt.

Fourthly, the learned trial judge in his summing up says :—

"So if you feel satisfied that a stab or a slash with this instrument or one like it used with sufficient force to cut the deep tissues of the throat, means that whoever did it intended a probably fatal wound, then the offence is murder even without an express intention to kill."

This in our view is a misdirection on the law and on the facts. As we have already said, the medical evidence established the cause of death as multiple fracture of the skull. The learned trial judge has not dealt adequately with the fractures of the skull and, in this passage of his summing up referred to above, has in effect told the assessors they may ignore the fractures to the skull and pay attention only to the knife wound. The knife wound did not in fact kill the deceased, and it was wrong in law for the learned trial judge to tell the assessors that they could base a conviction for murder on the knife wound.

For these reasons we do not consider that the conviction should stand. We accordingly allow the appeal and order the appellant to be released.

Appeal allowed.

CHOW CHEE YONG v. PUBLIC PROSECUTOR.

[App. Crim. Juris. (Abbott, J.) June 16, 1952]

[Seremban — Criminal Appeal No 3 of 1952]

Customs Enactment, 1936, s. 114(i)(e) — Guilty knowledge — Re-trial.

The appellant was a dealer in watches who was charged with having contravened section 114(i)(e) of the Customs Enactment, 1936, in that he was knowingly in possession of a valuable gold watch on which customs duty had not been paid. There was evidence that the watch had been purchased in Singapore by one Mr. Brown, who later sold it to the appellant. The Magistrate, apparently, accepted the appellant's statement to the effect that when he purchased the watch he did not know whether customs duty had been paid on it or not. The learned Magistrate, however, convicted the appellant for having possession of the watch.

Held, that (1) the onus of proving that he did not know that customs duty had not been paid lay upon the appellant; (2) the matter for determination was a matter of guilty knowledge; and (3) this was a proper case for a re-trial.

Cases referred to :—

(1) *Rex v. Aves* (1950) 2 All E.R. 330.

(2) *Rex v. Carr-Braint* (1943) 2 All E.R. 156; (1943) K.B. 607.

CRIMINAL APPEAL.

P. Hall for the appellant.

D. C. Jackson (D.P.P.) for the respondent.

Cur. Adv. Vult.

Abbott, J. : — This is an appeal from the Magistrate in Seremban. The appellant is a dealer in watches and he was charged in the lower Court with having contravened section 114(i)(e) of the Customs Enactment in that he was knowingly in possession of a valuable gold wrist watch on which customs duty had not been paid. There was evidence that the watch had been purchased in Singapore by a person giving his name as "Mr. E. Brown" — a receipt to this effect was produced in the lower Court. Ten days later the purchaser sold it to the appellant and received, as part payment, another watch of far less value. The appellant's premises were visited by customs officials who took possession of the watch together with the receipt for its purchase in Singapore and initiated proceedings against the appellant in the lower Court. The Magistrate accepted the fact that the appellant had bought the watch from Mr. Brown and, apparently, accepted the appellant's statement to the effect that when he purchased the watch he did not know whether customs duty had been paid on it or not. By the requirement of section 114(ii) of the Customs Enactment No. 5 of 1936, the onus of proving that he did not know that customs duty had not been paid lay upon the appellant. The Magistrate, in convicting the appellant, does not appear to have given his attention to this onus and seems to have convicted the appellant for having been in mere possession of the watch without knowing whether the customs duty had been paid or not. The actual matter for determination was, of course, a matter of guilty knowledge and this should have been considered in the light of the decisions in *Rex v. Aves*[1] and *Rex v. Carr-Braint*[2]. In all the circumstances I consider that this is a proper case for a re-trial and I so order. The re-trial is to be held by the President of the Sessions Court, Seremban.

Re-trial ordered.

CHAN CHEN SUM v. NAM LEE & CO.

[App. Civ. Juris. (Wilson, J.) June 20, 1952]

[Kuala Lumpur — Civil Appeal No. 5 of 1952]

Landlord and tenant — Control of Rent Ordinance, 1948, s. 12 — Application for ejectment.

The respondent in this case applied to the Rent Assessment Board of Kuala Lumpur for permission to apply to any Court for an Order of Ejectment of the appellant from certain premises. This was granted. The appellant contended that the application of the respondent should have been refused by the Board on the grounds that (1) no notice to quit had been given to the respondent before the application was made and; (2) the Board should have found on the evidence before it that there had been a breach of covenant by the applicant.

Held, that (1) where there was no evidence before the Board as to any notice to quit at all, it could not be said that an application to a Court for an Order of Ejectment would necessarily fail; (2) the matter was one which the Board correctly left for determination by any Court to which an application for ejectment may be made.

Case referred to :—

(1) *L. Stanley v. G. B. Bull* (1952) M.L.J. 65.

CIVIL APPEAL.

Ng Ek Teong for the appellant.

Gould for the respondent.

Cur. Adv. Vult.

Wilson, J.: — On the application of the respondent the Rent Assessment Board of Kuala Lumpur gave permission to the respondent under section 12 of the Control of Rent Ordinance, 1948 to apply to any Court for an Order of Ejectment of the appellant from certain premises. It is contended by the appellant that the application of the respondent should have been refused by the Board on the grounds that :—

(1) No notice to quit has been given to the respondent before the application was made and;

(2) That the Board should have found on the evidence before it that there had been a breach of covenant by the applicant.

It has been urged that for these reasons any application to a Court for ejectment must have failed. In support of this Mr. Ng Ek Teong has relied on my judgment in the case of *L. Stanley v. G. B. Bull*[1]. That was a case of an Originating Summons for an Order of *Certiorari* that the proceedings before the Rent Assessment Board be quashed. Since that case was decided the law has been altered by the Control of Rent (Amendment) Ordinance, 1952, which allows an appeal on any point of law from any decision of the Rent Assessment Board. This in itself clearly alters the position and apart from that the circumstances in the case now before me are different to those in the case then before me. In the previous case there was evidence that the notice to quit was clearly bad, and for that reason, amongst others, I refused to interfere with the decision of the Rent Assessment Board refusing permission to proceed for ejectment on the ground that the application for ejectment must have failed.